

Appl. No. 10/724,839
Docket No. P147
Amdt. dated November 14, 2008
Reply to Office Action mailed on May 14, 2008
Customer No. 27752

REMARKS

Claim Status

Claims 1 – 63 are pending in the present application. Claims 1 – 31 and 56 – 63 have been withdrawn as a result of an earlier restriction requirement. Claims 32, 36 – 38, 40, 42, 49 – 51, 53 and 55 have been amended. Claims 35, 39, 41, 43 – 46, 48, 52 and 54 have been canceled. No additional claims fee is believed to be due. It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Double Patenting

Claims 32 – 35, 47 and 48 have been rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 4 and 7 – 8 of US Patent No. 6,306,442. This rejection is not expressly agreed with or acquiesced to. Nevertheless, in an effort to gain timely allowance of the claims, a terminal disclaimer in accordance with 37 CFR § 1.321 is being submitted herewith. Applicants respectfully request reconsideration and withdrawal of the rejection.

Claims 32 – 35, 47 and 48 have been rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 5 of US Patent No. 6,475,512. This rejection is not expressly agreed with or acquiesced to. Nevertheless, in an effort to gain timely allowance of the claims, a terminal disclaimer in accordance with 37 CFR § 1.321 is being submitted herewith. Applicants respectfully request reconsideration and withdrawal of the rejection.

Claims 32 – 35, 47 and 48 have been rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 5 of US Reissue Patent No. RE38112. This rejection is not expressly agreed with or acquiesced to. Nevertheless, in an effort to gain timely allowance of the claims, a terminal disclaimer in accordance with 37 CFR § 1.321 is being submitted herewith. Applicants respectfully request reconsideration and withdrawal of the rejection.

Claims 32 – 35, 47 and 48 have been rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 4 of US Patent

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No. 6,818,225. This rejection is not expressly agreed with or acquiesced to. Nevertheless, in an effort to gain timely allowance of the claims, a terminal disclaimer in accordance with 37 CFR § 1.321 is being submitted herewith. Applicants respectfully request reconsideration and withdrawal of the rejection.

Claims 32 – 35, 47 and 48 have been rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 4 and 7 of US Patent No. 5,958,898. This rejection is not expressly agreed with or acquiesced to. Nevertheless, in an effort to gain timely allowance of the claims, a terminal disclaimer in accordance with 37 CFR § 1.321 is being submitted herewith. Applicants respectfully request reconsideration and withdrawal of the rejection.

Claims 32 – 35, 47 and 48 have been rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 5 of US Patent No. 6,180,131. Applicants believe that this rejection may be in error as US Patent No. 6,180,131 reissued as US Patent No. RE38,112 which has been cited above and for which a terminal disclaimer is being submitted herewith. Applicants respectfully request reconsideration and withdrawal of the rejection.

Claims 32 – 35, 47 and 48 have been rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 4 and 7 – 8 of US Patent No. 5,965,175. This rejection is not expressly agreed with or acquiesced to. Nevertheless, in an effort to gain timely allowance of the claims, a terminal disclaimer in accordance with 37 CFR § 1.321 is being submitted herewith. Applicants respectfully request reconsideration and withdrawal of the rejection.

Claims 32 – 35, 47 and 48 have been rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 4, 7 – 8 and 23 of US Patent No. 6,093,418. This rejection is not expressly agree with or acquiesced to. Nevertheless, in an effort to gain timely allowance of the claims, a terminal disclaimer in accordance with 37 CFR § 1.321 is being submitted herewith. Applicants respectfully request reconsideration and withdrawal of the rejection.

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Rejection Under 35 U.S.C. § 102 Over Hayek

Claims 32 – 36 and 47 – 49 have been rejected under 35 U.S.C. § 102 over Hayek et al. (US Patent No. 5,958,898)(“Hayek”). Applicants respectfully traverse this rejection.

Hayek is directed to a “process for feeding an animal a diet which alters the function and composition of gut associated lymphoid tissue (GALT) by increasing the proportion of T cells in the GALT.” *Abstract*. Hayek, however, fails to teach each and every element of the claims. Claim 32, as amended, is directed to, *inter alia*, a method selected from the group consisting of enhancing calcium absorption, improving bone health, improving strength, improving physical activity performance, and combinations thereof, the method comprising administering to a companion animal a companion animal composition comprising from about 0.01% to about 0.2% fructooligosaccharide, by weight of the composition. As best understood by Applicants, Hayek fails to teach administering to a companion animal a companion animal composition comprising from about 0.01% to about 0.2% fructooligosaccharide, by weight of the composition, to enhance calcium absorption, improve bone health, improve strength, improve physical activity performance, and combinations thereof. Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 102 Over Van Loo

Claims 32 – 34 and 47 have been rejected under 35 U.S.C. § 102 over Van Loo et al. (US Patent No. 6,500,805)(“Van Loo”). Applicants respectfully traverse this rejection.

Van Loo is directed to the use of a “fructan with an average degree of polymerisation of at least 15 for the manufacture of a composition for the prevention and/or treatment of colon cancer in non-bovine mammals, particularly in human beings.” *Abstract*. Van Loo, however, fails to teach each and every element of the claims. Claim 32, as amended, is directed to, *inter alia*, a method selected from the group consisting of enhancing calcium absorption, improving bone health, improving strength, improving physical activity performance, and combinations thereof, the method comprising administering to a companion animal a companion animal composition comprising from

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about 0.01% to about 0.2% fructooligosaccharide, by weight of the composition. As best understood by Applicants, Van Loo fails to teach administering to a companion animal a companion animal composition comprising from about 0.01% to about 0.2% fructooligosaccharide, by weight of the composition, to enhance calcium absorption, improve bone health, improve strength, improve physical activity performance, and combinations thereof. Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 102 Over Vickers

Claims 32 – 37 and 47 – 50 have been rejected under 35 U.S.C. § 102 over Vickers et al. (American Journal of Veterinary Research (AJVR) 62(4), 2001, 609 – 615) (“Vickers”). Applicants respectfully traverse this rejection.

Vickers is directed to a comparison of “fermentation characteristics of fructooligosaccharides (FOS) and other fiber substrates that are commonly found in canine diets.” Page 609, Col. 1, Objective. Vickers, however, fails to teach each and every element of the claims. Claim 32, as amended, is directed to, *inter alia*, a method selected from the group consisting of enhancing calcium absorption, improving bone health, improving strength, improving physical activity performance, and combinations thereof, the method comprising administering to a companion animal a companion animal composition comprising from about 0.01% to about 0.2% fructooligosaccharide, by weight of the composition. As best understood by Applicants, Vickers fails to teach administering to a companion animal a companion animal composition comprising from about 0.01% to about 0.2% fructooligosaccharide, by weight of the composition, to enhance calcium absorption, improve bone health, improve strength, improve physical activity performance, and combinations thereof. Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 102 Over Howard

Claims 32 – 35, 38 – 40, 47 – 48, and 51 – 53 have been rejected under 35 U.S.C. § 102 over Howard et al. (Nutrition Research, 2000, 20(10), 1473 – 1484) (“Howard”). Applicants respectfully traverse this rejection.

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Howard discloses that “[t]wenty-eight adult ovariectomized dogs were fed one of four diets differing in type of dietary fiber to assess the effects of fiber on energy digestibility, partitioning of nitrogen (N) components, and changes in intestinal microflora.” *Abstract*. Howard, however, fails to teach each and every element of the claims. Claim 32, as amended, is directed to, *inter alia*, a method selected from the group consisting of enhancing calcium absorption, improving bone health, improving strength, improving physical activity performance, and combinations thereof, the method comprising administering to a companion animal a companion animal composition comprising from about 0.01% to about 0.2% fructooligosaccharide, by weight of the composition. As best understood by Applicants, Howard fails to teach administering to a companion animal a companion animal composition comprising from about 0.01% to about 0.2% fructooligosaccharide, by weight of the composition, to enhance calcium absorption, improve bone health, improve strength, improve physical activity performance, and combinations thereof. Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 102 Over Sparkes

Claims 32, 33, 35, 37, 47 and 48 have been rejected under 35 U.S.C. § 102 over Sparkes et al. (American Journal of Veterinary Research, AJVR, 59(4), 1998, 431 – 435)(“Sparkes”). Applicants respectfully traverse this rejection.

Sparkes is directed to investigating “changes in the duodenal flora of healthy cats over time” and evaluating “the effect of dietary supplementation with fructooligosaccharides (FOS).” Page 431, Col 1, Objective. Sparks, however, fails to teach each and every element of the claims. Claim 32, as amended, is directed to, *inter alia*, a method selected from the group consisting of enhancing calcium absorption, improving bone health, improving strength, improving physical activity performance, and combinations thereof, the method comprising administering to a companion animal a companion animal composition comprising from about 0.01% to about 0.2% fructooligosaccharide, by weight of the composition. As best understood by Applicants, Sparkes fails to teach administering to a companion animal a companion animal composition comprising from about 0.01% to about 0.2% fructooligosaccharide, by weight of the composition, to enhance calcium absorption, improve bone health, improve

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strength, improve physical activity performance, and combinations thereof. Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 103(a) Over Hayek

Claims 54 and 55 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Hayek. Applicants respectfully traverse this rejection.

Hayek discloses that the “fermentable fibers are used in pet food composition in amounts from 1 to 11 weight percent of supplemental total dietary fiber, preferably from 2 to 9 weight percent, and most preferably from 4 to 7 weight percent.” Col. 3, lines 38 – 42. As best understood by Applicants, Hayek fails to disclose that a composition comprising less than 1% fermentable fibers would be beneficial. Furthermore, Hayek fails to disclose that a composition comprising fermentable fibers in the amount of about 0.01% to about 0.2%, by weight of the composition would be beneficial. As best understood by Applicants, Hayek fails to provide any reasonable expectation of success in providing to a companion animal a composition comprising from about 0.01% to about 0.2% of fructooligosaccharaide, by weight of the composition, to enhance calcium absorption, improve bone health, improve strength, improve physical activity performance, and combinations thereof in a companion animal. Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 103(a) Over Van Loo

Claims 35 – 37 and 48 – 50 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Van Loo. Applicants respectfully traverse this rejection.

Van Loo discloses that “RAFTILOSE® and RAFTILINE® were added to the control diet at 10% level at the expense of starch.” Col. 7, lines 28 – 29. As best understood by Applicants, Van Loo discloses only the single level of the use of RAFTILOSE® and RAFTILINE® and fails to disclose that a composition comprising less than 1% fermentable fibers would be beneficial. Furthermore, Van Loo fails to disclose that a composition comprising fermentable fibers in the amount of about 0.01% to about 0.2%, by weight of the composition would be beneficial. As best understood by Applicants, Van Loo fails to provide any reasonable expectation of success in providing to a companion animal a composition comprising from about 0.01% to about 0.2% of

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fructooligosaccharaide, by weight of the composition, to enhance calcium absorption, improve bone health, improve strength, improve physical activity performance, and combinations thereof in a companion animal. Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 103(a) Over Howard in view of Roberfroid

Claims 32 – 55 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Howard in view of Roberfroid M. (Nutrition, 16, 2000, 677 – 679)(“Roberfroid”). Applicants respectfully traverse this rejection.

Howard discloses the use of FOS at a level of 1.5%. Table 1. Roberfroid is directed to the “composition and source of inulin and oligofructose, the physiologic effects of their consumption, and how these materials relate to the concept of dietary fiber.” Page 677, Col 1, lines 4 – 7. As best understood by Applicants, Roberfroid fails disclose any level of fructooligosaccharides that would be beneficial in a composition for a companion animal. Claim 32, as amended, is directed to, *inter alia*, a method selected from the group consisting of enhancing calcium absorption, improving bone health, improving strength, improving physical activity performance, and combinations thereof, the method comprising administering to a companion animal a companion animal composition comprising from about 0.01% to about 0.2% fructooligosaccharide, by weight of the composition. As best understood by Applicants, Howard and Roberfroid, either alone or in combination, fails to disclose that a composition comprising less than 1% fermentable fibers would be beneficial. Furthermore, Howard and Roberfroid, either alone or in combination, fails to disclose that a composition comprising fermentable fibers in the amount of about 0.01% to about 0.2%, by weight of the composition would be beneficial. As best understood by Applicants, the combination of Howard and Roberfroid fails to provide any reasonable expectation of success in providing to a companion animal a composition comprising from about 0.01% to about 0.2% of fructooligosaccharaide, by weight of the composition, to enhance calcium absorption, improve bone health, improve strength, improve physical activity performance, and combinations thereof in a companion animal. Applicants respectfully request reconsideration and withdrawal of the rejection.

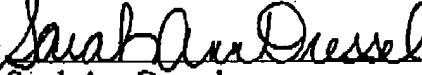
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Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, entry of the amendments presented herein, reconsideration of this application, and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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